

**Board of Pharmacy
Ancillary Personnel
Title 16, Section 1793.3**

§1793.3. Other Non-Licensed Pharmacy Personnel.

(a) In addition to employing a pharmacy technician to perform the tasks specified in section 1793.2, a pharmacy may employ a non-licensed person to type a prescription label or otherwise enter prescription information into a computer record system, but the responsibility for the accuracy of the prescription information and the prescription as dispensed lies with the registered pharmacist who initials the prescription or prescription record. At the direction of the registered pharmacist, a non-licensed person may also request and receive refill authorization. ~~There shall be no more than one non-licensed person, other than a pharmacy technician, performing the tasks specified in this section for each registered pharmacist on duty.~~

(b) A pharmacist may supervise the number of non-licensed personnel performing the duties specified in subdivision (a) that the pharmacist determines, in the exercise of his or her professional judgment, does not interfere with the effective performance of the pharmacist's responsibilities under the Pharmacy Law.

(c) A pharmacist who, exercising his or her professional judgment pursuant to subdivision (b), refuses to supervise the number of non-licensed personnel scheduled by the pharmacy, shall notify the pharmacist-in-charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the non-licensed personnel that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule.

(d) No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this section.

Authority cited: Sections 4005 and 4007, Business and Professions Code. Reference: Sections 4005 and 4007, Business and Professions Code.

TITLE 16. Board of Pharmacy

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on April 5, 2004.

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 400 R Street, Sacramento, CA 95814 at 2:00 p.m. on April 21, 2004.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections of the Business and Professions Code Sections 4005 and 4007 and to implement, interpret or make specific Sections 4005 and 4007 of the Business and Professions Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 4005 authorizes the Board of Pharmacy to adopt regulations relating to the practice of pharmacy.

Business and Professions Code Section 4007 permits the Board of Pharmacy to adopt regulations relating to the supervision of ancillary personnel by a pharmacist.

Section 1793.3 allows a pharmacist to supervise a single unlicensed individual who can enter information into the pharmacy computer or prepare labels for dispensed prescriptions.

The proposed amendment to Section 1793.3 would permit a pharmacist to supervise that number of unlicensed individuals who enter information into the pharmacy computer or prepare labels that the pharmacist feels is appropriate. The proposed amendment also prohibits an employer from taking disciplinary action against the pharmacist for exercising their judgment regarding the number of unlicensed personnel to be employed in the pharmacy.

The Board of Pharmacy seeks to provide pharmacies greater flexibility in staffing to more effectively provide service to its customers.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board of Pharmacy has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board of Pharmacy is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Pharmacy has determined that the proposed regulations would not adversely affect small businesses. The Board of Pharmacy has made this determination because the proposed regulation would provide pharmacies with greater flexibility in pharmacy staffing.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Pharmacy at 400 R Street, Suite 4070, Sacramento, California 95814, or from the Board of Pharmacy website (www.pharmacy.ca.gov).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

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| Name: | Paul Riches |
| Address: | 400 R Street, Suite 4070 Sacramento, CA 95814 |
| Telephone No.: | (916) 445-5014 x 4016 |
| Fax No.: | (916) 327-6308 |
| E-Mail Address: | Paul_Riches@dca.ca.gov |

The backup contact person is:

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| Name: | Virginia Herold |
| Address: | 400 R Street, Suite 4070 Sacramento, CA 95814 |
| Telephone No.: | (916) 445-5014 x4005 |
| Fax No.: | (916) 327-6308 |
| E-Mail Address: | Virginia_Herold@dca.ca.gov |

Website Access: Materials regarding this proposal can be found at www.pharmacy.ca.gov.

Board of Pharmacy

Initial Statement of Reasons

Subject Matter of Proposed Regulation: Ancillary Personnel

Sections Affected: 1793.3

Specific Purpose of the Proposed Changes:

The Board of Pharmacy has proposed amendments to Section 1793.3 to provide pharmacies with greater staffing flexibility.

Factual Basis/Rationale

The rapid growth in prescription drug coverage over the last ten years has resulted in greater pharmacy workload associated with resolving third party payment conflicts and with increased prescription volume associated with the increased drug coverage. Existing regulations that limit the number of unlicensed ancillary personnel who are primarily employed to resolve such third party payment issues was adopted in 1992 prior to the growth in third party coverage and to handle the data entry workload associated with increased prescription volume. Removing the restriction on ancillary personnel will provide pharmacies with the staffing flexibility needed to provide more efficient service to customers without undermining consumer safety. Increased use of unlicensed ancillary personnel can free the pharmacist to focus on that work requiring a pharmacist's license.

Underlying Data

Excerpt from Trends and Indicators In The Changing Health Care Marketplace, 2002 published by the Kaiser Family Foundation.

“Consumers Face Higher Costs As Health Plans Seek to Control Drug Spending” an *Issue Brief* published by the Center for Studying Health System Change.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the absence of testimony indicating adverse economic impact regarding these rulemaking proposals at the informational hearings held by the board.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.